

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:)
AREDIA and ZOMETA PRODUCTS)
LIABILITY LITIGATION) NO. 3:06-MD-1760
) JUDGE CAMPBELL
THIS DOCUMENT RELATES TO CASE)
NO. 3:07-0665 (JOAN LECOMPTE)
AND ARMAND LECOMPTE))

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 534), Plaintiffs' Partial Objection and Request for Clarification (Docket No. 551), Plaintiffs' Consolidated Motion for Oral Argument (Docket No. 552), and Defendant's Objections to Magistrate's Report and Recommendation (Docket No. 571).

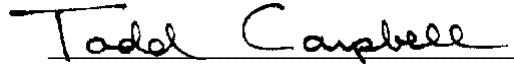
The Court has reviewed the Report and Recommendation, the above-cited pleadings and the file. Plaintiffs' Motion for Oral Argument (Docket No. 552) is denied.

Plaintiffs' Partial Objection is overruled and Plaintiffs' Request for Clarification is denied. The Magistrate Judge's Report and Recommendation clearly states: "Whether fraud must be determined by the FDA or by a New Jersey state court is, at least initially, an issue of statutory interpretation for the New Jersey state courts." Docket No. 534, p. 3. This Court agrees.

Defendant's Objections are also overruled. Nothing in the case of Cona v. Merck & Co. requires the Court to revisit its decision concerning the Report and Recommendation in the Scalamoni case or to reject the pending Report and Recommendation in this case. The Magistrate Judge's Report and Recommendation (Docket No. 534) is adopted and approved.

Accordingly, Plaintiffs' Motion for Attorneys' Fees (Docket No. 499) is denied, and Plaintiffs' Motion to Remand is granted. This action is remanded to the Superior Court of New Jersey, with each party bearing its own costs.

IT IS SO ORDERED.



TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE